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MARYLAND'S PART IN FOUNDING THE FEDERAL GOVERNMENT.

By J. FREDERICK ESSARY.

(Read before the Society, May 18, 1915.)

I am frequently led to wonder if this generation of Marylanders realizes the very important part played by their State in the great drama of the Revolution, in the momentous events which that war made possible and in the process of creating a new and untried system of government on this continent. The state has had an honorable share in all this and the descendants of the men who stood out boldly in the early period of our history, the heroic spirits who pledged Maryland to the cause of freedom and led her across the threshold of national life, may feel sincere pride in the achievements of her statesmen, her soldiers, her patriots.

Civilization accords no rarer privilege to the men who make history than the privilege of founding orderly government. Thousands there may be who have builded upon an order, once established; other thousands may have been privileged to defend it and to enjoy its usufructs, but there are only a few men whom all mankind honor as pathfinders, as fearless pioneers in the development of a system of human authority.

This is just as true of the American republic as it is of any of the governments that have gone before it or any that have come after it. A mere handful of figures stand out preëminently in the great struggle that gave this country its equality before the world, and its people their right to "life, liberty and the pursuit of happiness." A vast multitude of men made sacrifices of

their property, their blood and their lives that this end might be achieved, but oblivion has claimed all but that small group of giants who completed the work of the sword by welding the colonies into a confederation and the confederation into an indissoluble union.

And as the Revolutionary period recedes, as the perspective grows, interest in its historic events and in its dynamic personalities, becomes more and more absorbing. The men who made this republic possible; the men who laid its foundation upon deep and enduring lines; the men whose brain brought into being the organic law of the United States are more and more profoundly venerated by each succeeding generation.

It was Maryland's fortune to contribute handsomely to the soldiery and to the statesmanship of this era. And it is with personalities rather than with principles that I shall deal; with events rather than with abstractions. History, after all, is but the sum total of men's activities, but a record of their passions, their prejudices, their patriotism as reflected in their deeds. National achievement is only the focusing of individual achievement, only a concentration of individuality. That is why this brief review will comprehend men rather than measures.

Six Marylanders of towering stature stand out in the solemn proceeding that gave this nation its birth, that organized a confederation to promote a successful war, that founded a permanent government out of the chaos that followed the victory at Yorktown. Charles Carroll of Carrollton, John Hanson, James McHenry, Luther Martin, Samuel Chase and Thomas Johnson formed that illustrious company. And no state, north or south, can boast of an abler line of statesmen of the Revolutionary period.

These men were intimately and traditionally asso-

ciated with the Declaration of Independence, with the Articles of Confederation, and with the Constitution of the United States, the three charters of transcending consequence which will remain throughout the ages as monuments to the constructive genius of our government's founders. The record of their service in the Continental Congress and in the Constitutional Convention which followed it, entitled Maryland to a conspicuous place in the early annals of our government.

They were the men who overcame the Tory opposition to Maryland's break with the Crown. They were the men who refused to assent to the Articles of Confederation until the northwest lands were dedicated to the general government. They were the men who, when a constitution was about to be formed, defeated the Randolph scheme designed to wipe out the smaller states. Around this group of patriots, therefore, centered the bitterest parliamentary battles of the time.

Maryland was the last of the colonies to move for immediate independence. Under the old proprietary system Marylanders felt few of the hardships imposed by Great Britain upon their neighbors. The Tories were for a time in complete control of the provincial assembly and hesitated to cast off the lines that held them to the mother country. This was the situation in 1775. The colony had sent delegates to the Continental Congress, but these representatives were restricted to demands for redress for wrongs inflicted, but not authorized to declare for a break with the Crown.

A few bold spirits, however, headed by Carroll, Hanson and Johnson moved upon Annapolis, took control of the assembly, voted down the Tories and put Maryland forever on record for freedom when they caused to be passed through that body a resolution which read as follows:

“Resolved that what may be recommended by a majority of Congress, equally delegated by the people of the United Colonies, we will at the hazard of our lives and fortunes support and maintain, and that every resolution of the convention tending to separate this province from a majority of the colonies without the consent of the people is destructive to our internal safety.”

By this action all qualifications and limitations were removed. The Maryland delegation was authorized to stand with the majority of the colonies and to cast the lot of that province for independence whenever that move should be found advisable. Charles Carroll was given his first commission as a member of the Continental Congress under the instructions referred to.

He had just returned from a fruitless mission to Canada where he had been sent by the new government to win the Canadians over to the cause of freedom. With the failure of that enterprise he resumed his seat in the assembly and, in perhaps the greatest speech of his life, he told his associates that then was the time to act and to act with the same patriotism and love of liberty that had actuated the other colonies. Armed with the new instructions and accompanied by Thomas Johnson, Samuel Chase, William Paca, Thomas Stone, Matthew Tilghman and Robert Alexander, Carroll proceeded post haste to Philadelphia.

Before Carroll and his associates could reach the temporary capital, however, the immortal Declaration had been issued, the bonds had been cast off and America had asserted its political independence of Great Britain. It was not until August 2 that the Marylanders affixed their signatures to the instrument. And it was during this ceremony that one of the historic incidents in the life of Carroll had its setting.

When the hour arrived for the Marylanders to place

their names to the Declaration, John Hancock, President of the Congress, turned to Carroll and asked if the new arrival would sign it. "Most willingly," rang out the voice of the Maryland delegate. He stepped forward, pen in hand, and wrote the words "Charles Carroll." As he turned away, he found the delegates bantering each other as to whether, in case of the failure of the Revolution they would, for their act, hang singly or hang together. The remark was then made to Carroll: "You can easily escape his Majesty the King, should he at some future time require your presence, because there are so many Charles Carrolls."

Carroll's answer to this was quick and to the point. He reached again for the pen and added the words "of Carrollton," that his identity might be more easily established if the time should come when he would be required to pay with his life for the part he was then playing in the cause of independence.

Of this interesting circumstance Chauncey M. Depew has said:

"This is the only title of the Revolution. There may have been many men of distinction in different ages and countries whose proud boast it was that they could transmit to their descendents their name as of a dutchy, the earldom or the barony, bestowed upon them by royal grant for distinguished services to the Crown. But here was a distinction not bestowed nor granted, but assumed by the writer, not as a title of nobility, nor as a claim, like the lands of Blenheim, to a great estate conveyed by a grateful country, but as the location and description by which the executioner could find him if the cause of liberty failed."

There is an historic affinity between Charles Carroll and the Declaration of Independence. As the last survivor of the signers of that great instrument, "the most illustrious company of men assembled upon earth since

the Apostles," he was for forty years the great American patriarch. His home became a national shrine and his name is yet venerated as is that of no other Marylander in all history. Forty-seven of the signers lived to see the freedom to which they pledged their countrymen recognized by Great Britain. In all, forty-three lived to see the Constitution which they made possible ratified by the thirteen sovereign states. Three of them lived for fifty years after the July day when their proclamation of defiance was issued to the world. On the morning of July 4, 1826, just one half a century after the Declaration was adopted by the Continental Congress three members of that body—Thomas Jefferson, John Adams and Charles Carroll—were yet upon earth. When the sun set on that day Jefferson and Adams were gone. Carroll alone remained. Daniel Webster, in his splendid oration upon the death of Jefferson and Adams, concluded it with the following tribute to the last of the signers:

"Of the illustrious signers of the Declaration of Independence there now remains only one—Charles Carroll. He seems an aged oak standing alone on the plain, which time has spared a little longer after all its contemporaries have been leveled with the dust. Venerable object! We delight to gather around its trunk while it yet stands, and to dwell beneath its shadow. Sole survivor of an assembly of as great men as the world has ever witnessed in a transaction one of the most important that history records, what thoughts, what interesting reflections must fill his elevated and devout soul! If he dwell upon the past, how touching his recollections; if he survey the present, how happy, how joyous, how full of fruition of that hope which his ardent patriotism indulged; if he glance at the future, how does the prospect of his country's advancement almost bewilder and weaken conception! Fortunate, distinguished patriot! Interesting relic of the past! Let him know that while we honor the dead we do not forget

the living and that there is not a heart here which does not fervently pray that Heaven may yet keep him back from the society of his companions."

We have all been taught from childhood to revere George Washington as the first President of the United States, and he was, of course, the first President under the Constitution. Yet he was not the first man to wear that distinguished title in America. John Hanson, a Marylander, preceded him as the official head of this government. In 1781, immediately after the ratification by the States of the Articles of Confederation, this stout-hearted patriot was elected President of the United States in Congress Assembled, and by that act became the First Citizen in the land.

This position was created by the Articles and was designed to give the new nation a civil chieftain until some permanent system might be established. The duties of this official were confined largely to presiding over the Continental Congress, the body which elected him, and to affixing his signature to all state papers of that period. When the Constitution was adopted the Presidency of the United States in Congress Assembled was superseded by the Presidency of the United States and Washington became the Chief Magistrate as the first choice of the electoral college.

To Maryland, however, belongs the distinguished honor of having given to the American Union its first civil head, a circumstance so treasured by our people that the State, by common consent, erected a statue to Hanson in Statuary Hall at the capitol to commemorate the splendid service which he rendered to his country.

And in this connection I want to remind you that it was the leadership of John Hanson, Charles Carroll, Samuel Chase and Thomas Johnson that brought the last of the insurging colonies together under a common

bond; that united their fortunes and their fate forever and that gave them their first perfected plan of centralized government. It was their leadership that divorced the colonies from the Northwest Territory or crown lands and, by dedicating it to the general government, paved the way for the ultimate formation of that group of great states beyond the Allegheny Mountains.

As the representatives of the only state which at the outbreak of the Revolutionary War refused to join the Union, these Marylanders had it within their power to determine whether a republic of united states was to be formed following the successful issue of the war or whether there should rise up in America thirteen weak but independent commonwealths.

Maryland yielded to the extent of signing the Declaration of Independence, but that State held out stubbornly against the adoption of the Articles of Confederation until the other colonies should agree to surrender their claims to the crown lands in the northwest. Virginia, Pennsylvania, New York and Massachusetts had parcelled out that vast area extending as far west as the Mississippi River and as far north as the Great Lakes and held their shares under royal grant. When the Revolution came, they boldly announced their purpose to hold the territory in question and to extend their boundaries accordingly.

Maryland, through her delegation in the Continental Congress, rebelled against this, contending that inasmuch as these lands were gained by the struggle and sacrifices of all the colonies, this vast domain should inure to the benefit of all alike, and should be dedicated to the central government. The larger States refused at first to surrender their claims on the ground that they could and would not be parties to any form of federal government in which so much property and power

were concentrated. A deadlock followed. Many of the smaller States sided with Maryland and for months it looked as if the issues raised by the Maryland delegation would wreck the whole plan of forming a union. Neither side to the controversy seemed willing to recede and the Confederation was about to go upon the rocks.

About this time, however, a fateful circumstance changed the whole course of events. Confidential information reached the Continental Congress to the effect that France, then allied with America in a war against Great Britain, deeply deplored the fact that any division existed among the colonies upon the question of adopting the Articles of Confederation. The success of the Revolution depended in large measure upon the good will of France and the attitude of that government toward the domestic controversy had a sudden and propitious effect upon the Marylanders. That State's delegation in Congress communicated the substance of the French view to the legislature then sitting in Annapolis. This created a profound sensation when the information was added that Maryland's dissension was made capital of by England in practically every court of Europe.

It had never been Maryland's purpose to withhold her support of the cause of independence. She had held out against the final ratification of the Articles in order to force the larger colonies to cede their claims in the back lands to the Confederation. Finding, however, that their purpose was wholly misunderstood abroad, particularly in France, the legislature completely reversed itself and ordered the state's delegates in Congress to sign the Articles forthwith. This act completed the federation and made it possible for the colonies to act thereafter as a unit in prosecuting the war. And it ultimately ended in the crown lands being

turned over to the general government. The states holding them became impressed with the Maryland view and within a year the Maryland idea had completely triumphed.

Meanwhile the Marylanders, headed by Hanson, affixed their signatures to the Articles before the whole body of Congress. Wild applause accompanied this act, applause that echoed throughout the whole world. France was so pleased with the final union of all the colonies that the Minister of Foreign Affairs dispatched a letter to Congress felicitating the colonies upon the accession of Maryland. This letter, quoted from the Journal of the Continental Congress, is in part, as follows:

“The accession of the State of Maryland to the general confederation, in the opinion of the court of France, presents very great advantages, among which is this, that Congress, having at last acquired the power which the Act of Confederation has assigned to them, it is to be expected that their orders will be fully and exactly executed and that they will take advantage of the resources of their country to give to American patriotism new energy.

“The Minister is directed to inform Congress of the satisfaction the King has received on that account and to tell them at the same time that there is the most pressing necessity to take more effective measures than heretofore to drive the British out of the continent. The King entreats the United States, as his friends, not to lose a moment in acting as vigorously as possible against the common enemy.”

The Declaration of Independence paved the way for the Articles of Confederation. The Articles served imperfectly their purpose in prosecuting the War of the Revolution. But it remained for the Constitution to cement forever the States into a homogenous union of common interests and common aspirations.

It may be true, as once observed, that the Constitution had to lean awkwardly on the Farewell Address of Washington, the unrivalled common sense of Chief Justice Marshall and the colossal intellect of Daniel Webster, until in the fullness of time the sword of U. S. Grant gave it a fixed relation to the course of human events. Yet it has survived all national vicissitudes and today commands the reverence of every true American. It is recognized by students of political institutions throughout the world as a priceless contribution to the cause of government. To have had a voice in its creation was indeed an enviable privilege.

The victory at Yorktown, which made possible the treaty of peace between the colonies and Great Britain, while assuring America of its political independence, nevertheless left the country in a state of chaos. The original Continental Congress had been called when a common danger threatened and the need of a common defence presented itself. To this extent the colonies from Massachusetts to Georgia, united their forces and consented by mutual understanding to prosecute the war under the title of the "United Colonies of America."

This Congress however had no inherent authority. It operated under no fixed grant of power. Its existence was based upon no other relationship than that tentatively agreed to for the specific purpose of carrying on war. Early in its career it boldly overruled all dissenters and issued its Declaration of Independence. This Declaration was not referred back to the colonies for formal acceptance. The very existence of war was token enough of that acceptance.

No sooner had peace come, however, than the imperfection and impotency of the Confederation became apparent. The system established to meet an emergency

could not endure once the emergency was passed. The Congress properly assumed the right to accept terms of peace with Great Britain but it had no authority to solve the domestic problems that came in the wake of that peace.

Respect for the temporary union could not be longer enforced. Its measures were accepted as law if it happened to please all parties to so accept them. If not, they were openly flouted and derided. It was not a matter of rebellion or secession, but merely a general feeling that the plan of Confederation, as a permanent institution, was a failure.

This was the view which the ablest men in Maryland took of the new crisis which had come upon the infant republic. Carroll, Chase, Johnson, McHenry, Martin and Hanson took counsel upon the situation and agreed with the leading spirits of all the colonies that some permanent form of government would have to be devised if the Revolution were to prove a blessing.

Meanwhile conflicts were arising between the states over their respective interests. This was particularly true of Maryland and Virginia. Congress, under the Confederation had no power to step in and compose these differences. The only means of providing remedies was through conferences. Accordingly, the legislatures of Maryland and Virginia appointed commissioners in 1785 to form a compact for the regulation of navigation on the Potomac and Pocomoke Rivers and the Chesapeake Bay. These commissioners met first in Annapolis and then at Mount Vernon, but finding that their powers were inadequate they adjourned after preparing recommendations to their respective legislatures. These recommendations moved for a general conference of all the states to be held in Annapolis, a conference which Madison tells us was directly responsible for the first constitutional convention.

The Virginia legislature, taking the initiative in this matter, passed resolutions calling upon all the states to send commissioners to a convention to be held in Annapolis "to take into consideration the trade of the United States; to examine the relative situation and trade of the states; to consider how far a uniform system in their commercial relations might be necessary to their common interests and their permanent harmony, and to report to the several states such an act, relative to this great subject, as, when unanimously ratified by them will enable the United States in Congress Assembled to provide the same."

The Annapolis convention assembled in 1786, but only five states, that is, New York, New Jersey, Pennsylvania, Delaware and Virginia sent delegates. No action was taken at this meeting beyond the preparation of a resolution to be presented to all the states and to Congress calling upon the States to appoint commissioners to meet at Philadelphia on the second Monday in May of that year.

Virginia was again the first to move and appoint delegates to meet commissioners from other states under the terms of this resolution. Congress received the report of the Annapolis Convention but did not give it consideration until New York followed Virginia's lead by authorizing its delegation in Congress to submit a resolution providing for a constitutional convention. Early in 1787 Congress yielded to the pressure and passed the New York resolution authorizing the assembling of a convention "for the purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures, such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the states, render the Federal constitution adequate to the exigencies of government and the preservation of the union."

Maryland had held aloof from the Annapolis convention because her leading men of the time did not believe it would prove of value in meeting the disorganized condition in which the various states had found themselves. These men conceived it to be the duty of the states to draw a fundamental act that would effectively bind all the states together and which would therefore measurably supersede rather than supplement the discredited Articles of Confederation. They therefore joined with enthusiasm in the plan for a genuine constitutional convention.

The convention assembled for business on the second Monday in May and organized by the election of General Washington as president. Twelve states were represented. Rhode Island alone refused to send deputies. For four months this body deliberated upon a permanent constitution. Its debates were profound. Its divisions were sharp. Again and again differences arose that threatened to wreck the whole fabric. Only the patriotic determination of the delegates, a determination to establish in America a strong central government, kept them again and again from abandoning their purpose.

Finally, after a series of compromises, a draft of the constitution was agreed upon. The larger states conceded to the smaller equal representation in the Senate. The smaller conceded to the larger representation in the House upon a basis of population. The North granted to the South the right to import slaves and the South granted the demand of the North that an import tax upon everything but slaves might be levied. The states rights advocates yielded much and the strong federalists yielded much. From first to last the Constitution represents a spirit of accommodation and mutual concessions. It is the handiwork of no delegate

or delegation or sectional interest. It is the work of all delegations and all interests.

Throughout the stormy period of apparently irreconcilable differences and of bitter argument marking this convention the Maryland delegation headed by Martin and McHenry stood out. They served on important committees. They engaged day by day in the heated debate and fathered proposal after proposal. They urged the preservation of the rights of the states; they opposed any restriction upon the importation of slaves; they stood against unrestrained power of Congress to pass navigation laws and they proposed the assumption of state debts by the federal government.

The climax in Maryland's participation in this convention came however, when Luther Martin led a triumphant fight against the proposal of Edmund Randolph of Virginia. This superb effort against a move which Martin conceived to be in direct opposition to the rights of the states, is most interestingly told by Justice Ashley M. Gould in his "Sketch of Luther Martin." In this Judge Gould says:

"In the constitutional convention Martin belonged preëminently to the class of excellent critics and from the ninth day of June when he presented his credentials up to the day when he went back to Maryland vowing that he would have nothing more to do with such high-handed proceedings, his position was one of able and aggressive opposition to any scheme which had for its object the establishment of a highly centralized and puissant national government. He was the representative of one of the smaller states, and with quick precision saw the baleful result to those states which would follow the adoption of what history knows as the Virginia plan, introduced by Edmund Randolph, the governor of the state. It will hardly be contended at this time by the most ardent advocate of a centralized and powerful national government that the Virginia plan with its practical elimination of the smaller states

from the exercise of federal power, its provision for setting aside by the national legislature of such state laws as it might deem unconstitutional and its executive to be chosen by the same national legislature would have stood the test of time; indeed, that it would have endured longer than that rope of sand, the Confederation, and yet one who studies even the brief and practically surreptitious journals of that convention must conclude that the present constitution would never have been evolved from its labor had it not been for the leadership of Luther Martin aided by Yates and Lansing, of New York, in opposition to the scheme of Edmund Randolph, backed, as it was, by the Father of his Country, himself."

Such was the share of Maryland and her strong men in the three all-important moves by which a system of constitutional government was established in America. At every step in the trying process the state stood forward honorably and ably. And of that group of patriots who did her work in founding the republic five of them lived to build upon the foundation they had laid. Carroll was the first Senator from Maryland and was the author of the Assumption and Judiciary Acts of the First Congress. Martin became the leading lawyer of his day. Chase was elevated to the Supreme Court of the United States and was impeached by political enemies in the House of Representatives and acquitted by the Senate. McHenry was Secretary of War in the cabinets of George Washington and John Adams. Johnson was made an Associate Justice of the United States Supreme Court and was the only man in all history who ever declined the Chief Justiceship of that great tribunal. He was offered that position by President Washington and was also tendered the Secretaryship of State but he refused each of these honors that he might retire to private life and give the remainder of his days to laying out the District of Columbia.